IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/01/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.46269 of 2002
and W.P.Nos. 46270 and 46271 of 2002
and
W.P.M.P.Nos.67347 to 67351 of 2002

M/s.Thangam Motors (P) Ltd.
48, Bye Pass Road, Madurai-625 016. ... Petitioner in
all the W.Ps.

-Vs-

1.The Registrar
Tamil Nadu Taxation Special Tribunal
30, Rajaji Salai, Chennai-1.

2.The Deputy Commercial Tax Officer
Tamil Sangam Road Assessment Circle
Madurai. ... Respondents in
all the W.Ps.

Petitions under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus calling for the records on the file of the first respondent in O.P.No.951 of 2002 and quash the same and direct the second respondent to give reasonable opportunity to the petitioner to produce the books of accounts.

For Petitioner : Mr.A.Thiyagarajan

For Respondent 2: Mr.T.Ayyasamy
Special Government Pleader

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

Rule returnable forthwith. Mr.T.Ayyasamy, learned Special Government Pleader accepts notice on behalf of the second respondent.

2. These are the three writ petitions, where, for the three assessment years the pre-assessment notices were sent by the concerned

authority proposing assessment. In the pre-assessment notices, the assessee was directed to produce his account books for the concerned assessment years. It seems that on two or three occasions, the assessee obtained adjournment on the ground that he could not produce the account books as they were filed in the civil suit pending in the City Civil Court in O.S.No.4189 of 1999. There is material on record to suggest that the claim of the petitioner is true because the reference to those account books is to be found in the order in I.A.No.10597 of 19 99. There is a clear cut reference to the account books from 1995 to 1999 being exhibited before the City Civil Court. This is the only reason why the account books could not be produced and in the absence of account books, the assessment proceeded. The assessment orders were directly challenged by filing an original petitions before the Special Appellate Tribunal. However, the Special Appellate Tribunal has rejected the original petitions. In the order, the tribunal observed as under:-

"The petitioner may have a valid reason as if he could not produce the account books since he has produced them in the City Civil Court and the same cannot be a valid reason as far as the Commercial Tax Officers are concerned. It is for the assessee to produce the account books before the Commercial Tax Officers for verification and the reasons stated by the petitioners for their inability to produce those accounts cannot be taken as a valid reason as far as the Commercial Tax Officers are concerned."

3. We fail to follow this logic. What can be the valid reason for not producing the account books would continue to be a valid reason for not producing the account books before the Commercial Tax Officer as well. It is not as if the petitioner has avoided to file the account books or has shown his inability to file the same. The petitioner had prayed with good reasons that the account books were actually in the Court and that it would take time for him to retrieve back those account books and put them before the Commercial Tax Officer. Under the circumstances, we are of the clear opinion that the tribunal has erred in rejecting the plea of the petitioner. We would, therefore, set aside the order of the tribunal and allow the writ petition, however, not before putting the petitioner to the terms. To show his bonafides, the petitioner shall pay 25% of the liability found against him within one month from today. He shall produce those account books within two months from today. If however the petitioner does not make the payment of 25% of the total liability found in these three petitions, the writ petitions shall be treated to have been dismissed and the order of the tribunal would be deemed to have been restored. Even if the petitioner is not able to file the account books within the time frame permitted by us, the writ petit ions shall be treated to have been dismissed automatically and the order of the tribunal shall sustain. With these observations, the writ petitions are allowed and the order of the tribunal is set aside. The assessment orders are also set aside on the above conditions only. Consequently, connected W.P.M.P.Nos.67347 to 67351 of 2002 are closed.

Index : Yes
kst.

To:

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Tamil Nadu Taxation Special Tribunal
30, Rajaji Salai, Chennai-1.

2.The Deputy Commercial Tax Officer
Tamil Sangam Road Assessment Circle
Madurai.